

§218.7

Testing does not include (i) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (ii) marker inspections made in accordance with the provisions of §221.16(b) of this chapter.

[58 FR 43292, Aug. 16, 1993, as amended at 60 FR 11049, Mar. 1, 1995]

§218.7 Waivers.

(a) A railroad may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this part.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, he may grant the waiver subject to any conditions he deems necessary. Notice of each waiver granted, including a statement of the reasons, therefore, is published in the FEDERAL REGISTER.

§218.9 Civil penalty.

Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$550 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this

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part for a statement of agency civil penalty policy.

[53 FR 28599, July 28, 1988, as amended at 53 FR 52928, Dec. 29, 1988; 63 FR 11621, Mar. 10, 1998; 69 FR 30593, May 28, 2004]

EFFECTIVE DATE NOTE: At 72 FR 51196, Sept. 6, 2007, §218.9 was amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”, effective October 9, 2007.

§218.11 Filing, testing, and instruction.

The operating rules prescribed in this part, and any additional or more stringent requirements issued by a railroad in relation to the operating rules prescribed in this part, shall be subject to the provisions of part 217 of this chapter, Railroad Operating Rules: Filing, Testing, and Instruction.

Subpart B—Blue Signal Protection of Workers

§218.21 Scope.

This subpart prescribes minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require them to work on, under, or between such equipment and subjects them to the danger of personal injury posed by any movement of such equipment.

§218.22 Utility employee.

(a) A utility employee shall be subject to the Hours of Service Act, and the requirements for training and testing, control of alcohol and drug use, and hours of service record keeping provided for in parts 217, 219, and 228 of this chapter.

(b) A utility employee shall perform service as a member of only one train or yard crew at any given time. Service with more than one crew may be sequential, but not concurrent.

(c) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions:

(1) The train or yard crew is assigned a controlling locomotive that is under